



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 15, 2020

VIA ECF

Honorable Jesse M. Furman
United States District Judge
United States District Court
40 Foley Square, Room 2202
New York, NY 10007

Re: Natural Resources Defense Council v. U.S. Environmental Protection Agency,
17 Civ. 5928 (JMF)

Dear Judge Furman:

This Office represents defendant U.S. Environmental Protection Agency (“EPA”) in the above-referenced FOIA case. We write respectfully to request: (1) a one-day extension of the January 20, 2020 deadline in the Court’s December 13, 2019 disclosure order (“Dec. 13 Order”), to **January 21, 2020** [ECF No. 79]; and (2) an order staying EPA’s January 31, 2020 obligation to produce to NRDC the 28 records that the Court found were improperly held on the basis of the deliberative process privilege, to take effect upon the filing a notice of appeal on or before January 31, 2020, and only as to those records which are the subject of the appeal. This is EPA’s first request for a modification of the Dec. 13 Order. NRDC consents to both requests.

I. Modification of the January 20, 2020 Deadline

The Court’s Dec. 13 Order provided that EPA will “review the 165 records listed in Exhibit 3 of the NRDC’s December 9, 2019 letter, and, by the same date, shall notify NRDC whether it agrees with the categories in NRDC’s December 9, 2019 letter” on January 20, 2020. Dec. 13 Order, at 1. Because January 20, 2020 is a federal holiday, EPA respectfully requests that this deadline be extended to the following business day, which is January 21, 2020.

II. Request for a Stay Pending Appeal

The Dec. 13 Order provides that, “no later than January 31, 2020, the EPA is ORDERED to produce to the NRDC the twenty-eight records that the Court found were improperly withheld on the basis of the deliberative process privilege.” *See* Dec. 13 Order, at 2 (citing August 30, 2019 Order at 37–39; ECF No. 74, at 2; ECF No. 75, at 2). As of this date, the Solicitor General is still considering whether to authorize appeal. If EPA files a notice of appeal on or before January 31, 2020, a stay of the Court’s order will be necessary to ensure disclosure is not required before EPA has pursued its right to appellate review. Accordingly, EPA respectfully requests that the Dec. 13 Order be modified to stay the disclosure of certain records pending appeal as long as: (1) EPA files a notice of appeal on or before January 31, 2020; and (2) the stay is limited to the records that are the subject of any appeal.

We thank the Court for its consideration of these requests.

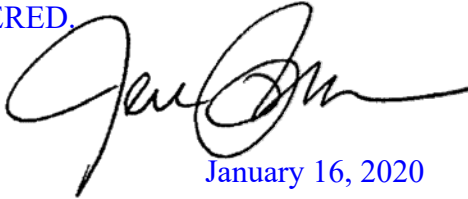
Respectfully submitted,

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cc: All Counsel of Record (via ECF)

Request GRANTED. The Clerk of Court is directed to terminate ECF No. 80. SO
ORDERED.



January 16, 2020